



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GRAYWIRE, L.L.C.

Plaintiff,

- v -

DEPOSITION SCIENCES, INC., AND
ADVANCED LIGHTING TECHNOLOGIES, INC.:

Defendants.
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USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>8-4-09</u>
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09 Civ. 4044 (JSR)

PROTECTIVE ORDER

JED S. RAKOFF, U.S.D.J.

All the parties to this action having requested that the Court issue a protective order to protect the confidentiality of nonpublic and competitively-sensitive information that may need to be disclosed to adversary parties in connection with discovery in this case pursuant to Fed. R. Civ. P. 26(c), and to guard against the waiver of attorney-client privilege and work product protection pursuant to Fed. R. Evid. 502(d), the parties having agreed to the following terms, and the Court having found that good cause exists for issuance of an appropriately-tailored protective order governing the pre-trial phase of this action, it is therefore hereby

ORDERED that any person subject to this Order -- including without limitation the parties to this action, their representatives, agents, experts and consultants, all third

parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order -- shall adhere to the following terms, upon pain of contempt:

1. Any person subject to this Order who receives from any other person any "Discovery Material" (i.e., information of any kind provided in the course of discovery in this action) that is designated as "Confidential" pursuant to the terms of this Order shall not disclose such Confidential Discovery Material to anyone else except as expressly permitted hereunder.
2. The person producing any given Discovery Material may designate as Confidential only such portion of such material as consists of:
 - (a) previously nondisclosed financial information (including without limitation profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports and sale margins);
 - (b) previously nondisclosed material relating to ownership or control of any non-public company;
 - (c) previously nondisclosed business plans, product development information, or marketing plans;
 - (d) any information of a personal or intimate nature regarding any individual;

- (e) trade secrets or other confidential research, development, know-how or technical information;
- (f) information subject to a confidentiality agreement with a nonparty; or
- (g) any other category of information hereinafter given confidential status by the Court.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the producing person or that person's counsel may designate such portion as "Confidential" by stamping or otherwise clearly marking as "Confidential" the protected portion in a manner that will not interfere with legibility or audability, and by also producing for future public use another copy of said Discovery Material with the confidential information redacted. With respect to deposition transcripts and exhibits, a producing person or that person's counsel may indicate on the record that a question calls for Confidential information, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information Governed by Protective Order" by the reporter.

4. If at any time prior to the trial of this action, a producing party realizes that some portion[s] of Discovery Material that that person previously produced without limitation

should be designated as Confidential, he may so designate by so apprising all parties in writing, and such designated portion[s] of the Discovery Material will thereafter be treated as Confidential under the terms of this Order.

5. No person subject to this Order other than the producing party shall disclose any of the Discovery Material designated by the producing party as Confidential to any other person whomsoever, except to:

- (a) the parties to this action;
- (b) counsel retained specifically for this action, including any paralegal, clerical and other assistant employed by such counsel and assigned to this matter;
- (c) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (d) any witness who counsel for a party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (e) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first

executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;

(f) stenographers engaged to transcribe depositions conducted in this action; and

(g) the Court and its support personnel.

6. Prior to any disclosure of any Confidential Discovery

Material to any person referred to in subparagraphs 5(d) or 5(e) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. The party seeking to disclose to said person shall provide the producing party with notice of its intent to disclose by furnishing the identity of the individual and a signed Non-Disclosure Agreement in compliance with this Protective Order. The party seeking disclosure shall also furnish the individual's current resume or curriculum vitae. The producing party shall have five (5) business days after receiving such notice to object in writing, setting forth the specific grounds for the objections, prior to the disclosure of Confidential information to the individual. If timely objection is made, the parties shall attempt in good faith to resolve the disclosure issue. If the issue is not resolved, the producing party shall, within five (5) business days

after posing an objection, file a motion before the Court seeking to prevent disclosure of such Confidential information to the individual. No Confidential information of the producing party shall be disclosed to the individual until the objection is resolved by the Court or by subsequent written agreement between the parties. The burden shall be on the producing party to establish good cause why the disclosure should not be made to the individual. If the producing party does not timely object or bring its motion, Confidential information may be disclosed to the individual.

7. All Confidential Discovery Material filed with the Court, and all portions of pleadings, motions or other papers filed with the Court that disclose such Confidential Discovery Material, shall be filed under seal with the Clerk of the Court and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing.
8. Any party who either objects to any designation of confidentiality, or who, by contrast, requests still further limits on disclosure (such as "attorneys' eyes only" in circumstances of highly sensitive information), may at any time prior to the trial of this action serve upon counsel for the designating party a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all

affected persons will convene a joint telephone call with the Court to obtain a ruling. Until the parties or the Court resolves the dispute, the document will be treated as marked.

9. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as Confidential. The Court also retains discretion whether to afford confidential treatment to any Confidential Document or information contained in any Confidential Document submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.
10. Each person who has access to Discovery Material that has been designated as Confidential shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.
11. If, in connection with this litigation, a party inadvertently discloses information subject to a claim of attorney-client privilege or attorney work product protection ("Inadvertently Disclosed Information"), such disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with

respect to the Inadvertently Disclosed Information and its subject matter.

12. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five business days, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed.
13. Within five business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information.
14. The receiving party may move the Court for an Order compelling production of the Inadvertently Disclosed Information. The motion shall be filed under seal, and shall not assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.
15. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this Order shall limit the right of any party to request an in camera review of the Inadvertently Disclosed Information.
16. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Discovery Material designated as "Confidential,"

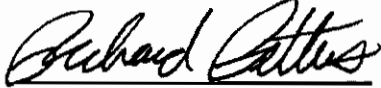
and all copies thereof, shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed.

17. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.
18. Notwithstanding any contractual requirements to the contrary, the parties are hereby ordered to disclose, in a time and manner pursuant to the Federal Rules of Civil Procedure, customer information responsive to any otherwise valid discovery request, including those calling for relevant customer names, project names and revenue amounts. As to information falling within the scope of a confidentiality agreement with a nonparty, the fact of such agreement does not alone preclude disclosure of otherwise discoverable information.
19. No person subject to this Protective Order other than the producing person shall disclose any Discovery Material designated by the producing person as "Attorneys Eyes' Only" to any other person whomsoever, except to:
 - (a) outside counsel retained specifically for this action, including any paralegal, clerical and other assistant employed by such outside counsel and assigned to this

- matter, but such "Attorneys Eyes' Only" Discovery Material shall not be disclosed to Michael L. Wach or any other manager, member or principal of plaintiff Graywire LLC;
- (b) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
 - (c) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
 - (d) stenographers engaged to transcribe depositions conducted in this action; and
 - (e) the Court and its support personnel.

SO STIPULATED AND AGREED.

KING & SPALDING, LLP



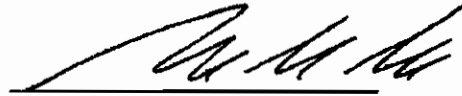
Dated:

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Dated: July 29, 2009

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Attorneys for Defendants
Deposition Sciences, Inc., and
Advanced Lighting Technologies,
Inc.

SO ORDERED.


JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
7/31, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GRAYWIRE, L.L.C.	:	
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Plaintiff,	:	
	:	09 Civ. 4044 (JSR)
- v -	:	
	:	<u>Non-Disclosure</u>
	:	<u>Agreement</u>
DEPOSITION SCIENCES, INC., AND	:	
ADVANCED LIGHTING TECHNOLOGIES, INC.	:	
	:	
Defendants.	:	
	:	
-----X	:	

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential/Attorneys Eyes' Only. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: _____